

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Paper 45

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Filed  
2 June 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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WILLIAM ROHR,

Junior Party,  
(Patent 6,143,232)<sup>1</sup>,

v.

DONALD E. McNULTY and TODD SMITH,

Senior Party  
(Application 09/328,080)<sup>2</sup>.

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Patent Interference 104,804 (Nagumo)

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Before: SCHAFER, TORCZON, and NAGUMO, Administrative Patent  
Judges.

NAGUMO, Administrative Patent Judge.

**FINAL JUDGMENT**  
(PURSUANT TO 37 CFR § 1.662(a))

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<sup>1</sup> Accorded benefit for priority of the filing date of its application, 09/361,210, July 29, 1999. According to Rohr, the real party in interest is Zimmer Technologies, Inc.

<sup>2</sup> Accorded benefit for priority of application 60/088,729, filed June 10, 1998. According to McNulty, the real party in interest is DuPuy Orthopaedics, Inc.

On May 30, 2003, junior party Rohr filed a notice that it would not take priority testimony in this case. (Paper 44 at 2.) Rohr also "proposes that the Board enter judgment on priority be entered in favor of McNulty and enter judgment confirming the Board's decision on the preliminary motions (Paper No. 36), as adhered to on reconsideration." (*Id.*)

Rohr's decision not to take priority testimony and its "proposal" are accepted as a concession of priority in this interference. "When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141-144, 146)." 37 CFR § 1.658(a). Thus, the decision on preliminary motions is incorporated in this Final Judgment.

ORDER

In consideration of the foregoing facts, it is:

ORDERED that judgment on priority as to Count 1 is awarded against junior party Rohr;

FURTHER ORDERED that William Rohr is not entitled to a patent containing claims 1-12 of Rohr's 6,143,232 patent, which correspond to Count 1;

FURTHER ORDERED that any request for reconsideration be filed within one month from the date of this judgment; and

FURTHER ORDERED that a copy of this decision be entered in the administrative record of Rohr's 6,143,232 patent and of McNulty's 09/328,080 application.

_____	)	
RICHARD E. SCHAFER	)	
Administrative Patent Judge	)	
	)	
	)	
_____	)	BOARD OF PATENT
RICHARD TORCZON	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
_____	)	INTERFERENCE
MARK NAGUMO	)	TRIAL SECTION
Administrative Patent Judge	)	
	)	

104,804

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